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**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Pennsylvania Department of Transportation and the New York State Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve the safety and capacity on U.S. Route 15 in Tioga County, Pennsylvania, and Steuben County, New York. The approximate length of the study area is 12 miles (6 miles in each state).

In Pennsylvania, the project begins just south of the U.S. Route 15 and PA 287 intersection and continues north to the PA/NY state line. The New York section begins at the state line and continues north to the project terminus just south of Presho, where the existing two lane roadway becomes a four-lane, limited access highway.

This 12-mile section of U.S. Route 15 was programmed because of several transportation considerations. It is a direct tie between the major economic areas of Williamsport and Corning. This is the last section of U.S. Route 15 between these two cities to come under consideration for upgrade (all other sections of U.S. Route 15 are either under design, construction, or studies are being activated). The upgrade would improve access to nearby recreational areas and would sustain the existing economy of the area by providing improved access. A facility constructed to present design standards would improve safety.

A two-phased study approach will be used to identify and evaluate alternatives. The initial phase is for scoping and needs assessment. The study will then involve the development of potential alternatives through the study area. Each of the alternatives will be developed such that a means of comparison can be made along with the No-Build Alternative. Upgrade of the existing facility and new alignments may be considered.

Concurrent with the development of the alternatives, various types of data will be gathered which will describe the study area as it relates to the alternatives. The following environmental areas will be investigated for EIS preparation: Traffic, air quality, noise and vibration; surface water resources; aquatic environmental;

floodplains; groundwaters; soils and geology; wetlands; vegetation and wildlife; endangered species; agricultural lands assessment; visual; socioeconomic and land use; construction impacts; energy; municipal, industrial, and hazardous waste; historic and archaeological structures and sites; Section 4(f) evaluation; and wild and scenic rivers. The above information will be utilized to refine the alternatives or eliminate a particular alternative from further considerations because of the potential for negative socioeconomic, environmental, or engineering impacts.

The second phase will utilize the alternatives selected in the initial phase and perform a detailed analysis on each. These alternatives will be the basis for the detailed environmental and engineering studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which meets the needs of traffic demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public feedback.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal agencies as well as State and local agencies in New York and Pennsylvania, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public and agency meetings will be held throughout the development of the project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Pennsylvania Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding ingovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 15, 1995.

**Manuel A. Marks,**

*Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.*

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## Federal Railroad Administration

### Florida East Coast Railway Company; Public Hearing

[RS&I-AP-No. 1094]

The Florida East Coast Railway Company (FEC) has petitioned the Federal Railroad Administration (FRA) seeking relief from the requirements of the Rules, Standards and Instructions, title 49 CFR, part 236, § 236.566, to the extent that FEC be permitted to operate foreign line nonequipped locomotives, in automatic train control (ATC) territory, in accordance with Centralized Traffic Control System rules as defined by FEC Operating Rules and title 49 CFR, part 236, § 236.567.

This proceeding is identified as FRA Rules, Standards and Instructions Application (RS&I-AP) Number 1094.

The FRA has issued a public notice seeking comments of interested parties and has conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Thursday, April 27, 1995, in the Saint Johns County Auditorium, located at 420 Lewis Speedway, Saint Augustine, Florida. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (title 49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on February 15, 1995.

**Phil Olekszyk,**

*Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.*

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## Research and Special Programs Administration

[Preemption Determination No. PD-7(R); Docket No. PDA-12(R)]

### Determination That Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances Are Preempted by Federal Hazardous Material Transportation Law; Decision on Petition for Reconsideration

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Decision on petition for reconsideration of RSPA's administrative determination that Maryland certification requirements for transporters of oil or controlled hazardous substances are preempted by the Federal Hazardous Material Transportation Law.

*Petitioners:* Maryland Department of the Environment (MDE).

*State Laws Affected:* Code of Maryland Regulations (COMAR) 26.10.01.16.D and 26.13.04.01.F.

*Applicable Federal Requirements:* 49 U.S.C. 5101 et seq. (previously the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 et seq.), and the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180.

*Mode Affected:* Highway.

**SUMMARY:** The Maryland Department of the Environment petition requests reconsideration of a RSPA determination that Federal hazardous material transportation law preempts Maryland regulations requiring certification of non-domiciled operators of motor vehicles loading or unloading certain hazardous materials in Maryland. The petition is denied.

**FOR FURTHER INFORMATION CONTACT:** Charles B. Holtman, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001, telephone number (202) 366-4400.

#### I. Background

On June 3, 1994, RSPA published in the **Federal Register** the determination that Maryland certification requirements, applicable to operators of

motor vehicles loading or unloading oil or "controlled hazardous substances" (CHS) in Maryland, are preempted by the Federal hazardous material transportation law (Federal hazmat law), to the extent that they apply to the loading or unloading of oil or CHS that is a hazardous material. 59 FR 28913. RSPA found that these requirements are training requirements, and that the requirements, as enforced and applied, are stricter than HMR training requirements at 49 CFR 172.700-.704.

Specifically, COMAR 26.10.01.16.D, which applies to operators of oil cargo tanks, requires the operator to take and pass a test administered by MDE at five in-state locations and at out-of-state business locations approved by MDE. COMAR 26.13.04.01.F, which applies to operators of vehicles transporting CHS, requires "[t]raining in the requirements necessary to transport hazardous waste," which include requirements promulgated by, and specific to, Maryland. In addition, the instructor must meet an experience criterion, and MDE may require the operator to pass an approved written examination. These elements of the certification requirements, RSPA found, are more strict than the HMR. 59 FR 28919.

To the extent that the requirements are more strict than the HMR, they violate 49 CFR 172.701, which permits States to apply training requirements to non-domiciled vehicle operators only if the requirements are no more strict than those of the HMR. Accordingly, RSPA reasoned, each of the two requirements is "an obstacle to accomplishing and carrying out" Federal hazmat law. 49 U.S.C. 5125(a)(2); see 59 FR 28919.

Within the 20-day time period provided in 49 CFR 107.211(a), MDE filed a petition for reconsideration of the determination. It certified that, in accordance with 49 CFR 107.211(c), it had mailed copies of the petition to CWTI/NTTC and to all others who had submitted comments, with a statement that each person, within 20 days, could submit comments on the petition. RSPA has received no comments on the MDE petition.

#### II. Petition for Reconsideration

In its June 20, 1994 petition, MDE first states that the three elements that RSPA found to be more strict than the HMR do not apply to both the oil and CHS vehicle operator certification requirements. It notes that only COMAR 26.10.01.16.D (oil) requires that the operator pass a State-administered examination; under COMAR 26.13.04.01.F (CHS), the examination requirement is at the discretion of MDE. Similarly, only COMAR 26.13.04.01.F

specifies required areas of training and instructor experience requirements.

MDE concedes that its CHS vehicle operator certification provisions specifying required areas of training and instructor experience criteria are "training requirements" within the meaning of 49 CFR 172.701. On the other hand, it contests the RSPA finding that the examination requirement, and the general requirement to obtain a certificate, are training requirements. It suggests, instead, that they "are intended to demonstrate that the training received by the drivers is adequate to insure the safe transportation and transfer of hazardous materials in Maryland." Because they are not training requirements, MDE then argues, RSPA cannot find them to be obstacles simply because they violate 49 CFR 172.701. Rather, MDE contends, RSPA must factually analyze whether they are obstacles as enforced and applied. MDE contends that CWTI/NTTC has not submitted specific evidence sufficient to allow RSPA to find the requirements to be obstacles. As an example, it notes, it does not in fact require a CHS vehicle operator to take an examination, but merely to submit a statement from the operator's employer that approved training has been completed.

MDE does not dispute that its rules specifying areas of training for CHS vehicle operators are training requirements, but argues that they are not more strict than the HMR. It submits that the rules generally are consistent with HMR requirements, differing only in requiring knowledge of Maryland requirements for transporting and handling hazardous wastes. In this latter respect, it contends that operator familiarity with the laws of States of operation should be deemed to be part of required HMR training, and therefore that the Maryland rules should not be found to be more strict.

MDE concedes that the instructor experience criterion is more strict than the HMR. It argues that preemption of this provision nevertheless should not invalidate the entire CHS vehicle operator certification program.

Finally, in their application CWTI/NTTC represented that Maryland applies the CHS vehicle operator certification requirement only to those loading or unloading RCRA hazardous waste, and not to other materials meeting the definition of CHS. Although MDE did not take issue with that representation in its comments, it now indicates that it applies the certification requirement to other CHS, including PCB-contaminated wastes, certain wastes associated with the production